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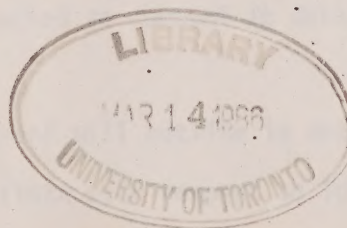
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URBAN DEVELOPMENT INSTITUTE POSITION

ON

LOT LEVIES



JUNE 26, 1981

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INTRODUCTION

The following is a submission prepared by Mr. Robert W. Macaulay Q.C., of Macaulay, Lipson & Joseph and Mr. Garry Smith, Q.C. of Weir & Foulds on behalf of the Urban Development Institute (Ontario). The purpose of this submission is to state clearly and concisely the position of the Urban Development Institute with respect to lot levies. This submission comes, in part, in response to a request by the Ministry of Intergovernmental Affairs which is presently considering amendments to the Municipal Act and quite possibly the Planning Act which would have the effect of changing the terms upon which levies can be imposed against new development. It is our understanding, that a discussion paper is to be prepared by the Ministry of Intergovernmental Affairs and that upon completion of the discussion paper, the Urban Development Institute, among others, will be asked to comment in detail on the specifics of the proposed legislation.

This brief will outline in detail the position of the Urban Development Institute with respect to lot levies. During our preliminary discussion with the Ministry of Intergovernmental Affairs we were not provided with any written material, therefore we find it difficult to properly comment upon the position that was presented by the Province at that time. However, at the end of this submission we have restated what we understand to be the basis for the present thinking by the Ministry of Intergovernmental Affairs with respect to lot levies.

The restatement of the Ministry's position is followed by a series of questions that we believe should be carefully considered by the Province prior to completing its discussion paper.

The Urban Development Institute has been actively involved for a number of years in discussions relating to proposed changes in levies.

In 1973, the Urban Development Institute published its first position on lot levies entitled: Submission of the Urban Development Institute of Ontario Relative to the Principles Appropriate for Development of Levies by Municipalities. This was submitted to the Ontario Housing Advisory Committee.

The Urban Development Institute reestablished a working committee on lot levies in 1975 to further investigate the increasing practice of charging development levies. This Committee produced an inventory of current research on levies as Phase I of a two phased research project under the direction of Price Waterhouse and Associates.

In November of 1976 Phase II was completed with a report entitled: Report on Lot Levies in Ontario produced by Price Waterhouse and Associates.

In February 1977 the Urban Development Institute published its report entitled: Lot Levy Study in Ontario and Analysis of the Current Situation.

With this background, we welcomed the invitation in early 1979 by the Minister of Intergovernmental Affairs to work with his staff and the Municipal Liaison Committee of A.M.O. We spent a great deal of time on the various drafts of the legislation prepared by the Ministry's

staff and were satisfied that real progress was being made towards rationalizing this very difficult problem. We were very disappointed when A.M.O alternately took the position that it was not prepared to accept the principle of accountability in establishing the amount of levies. It was at this stage that the dialogue ceased.

By way of general introduction the Urban Development Institute would like to make clear that it has always taken the position that development should pay its fair share of municipal costs and that new development should not create a burden on the financial base of any municipality. On the other hand, the Urban Development Institute strongly objects to levies being used to subsidize the general tax base.

The Urban Development Institute has not sought to fight a rear guard action for the present system. For example, it has accepted the principle that power should be given to the Municipality to impose levies as a condition to rezoning to the extent that such rezonings intensify the use of the property and impose a greater burden upon a Municipality than would development under the existing zoning.

The Urban Development Institute's basic thesis is that there must be some direct relationship between the levy and the cost of hard services (i.e. storm sewers, sanitary sewers, water supply and roads) incurred by a Municipality as a result of granting development approval.

PART ONE: SUMMARY

The position of the Urban Development Institute on lot levies summarized below. A detailed review follows in Part Two.

1. The Institute recognizes that lot levies may be legally imposed by a Region or local Municipality.
2. The quantum of lot levies should be based upon the cost of providing hard services only for each specific development.
3. The Municipality should be provided with a form or check list to allow easy calculation of the prorated proportion of the capital costs attributable each development on a per unit or per capita basis. This would assist all parties involved.
4. The Institute believes that levies should be payable at the time of application for building permit.
5. The Institute is concerned with what it refers to as a "hiatus" period between the draft legislation or discussion paper and proclamation.
6. The Institute believes that no levies should be charged for industrial or commercial development.
7. All funds received by Municipalities from levies should be placed into a public account and should be publicly accounted for and audited annually to ensure that the funds are spent on the determined hard services.
8. The levies proposed by the Municipality with respect to each development should be appealable to the Ontario Municipal Board.
9. Inasmuch as levies are not a pure planning consideration, when levies are challenged at the Municipal Board plans should continue to be processed through registration and the building permit stage, subject to an agreement between the parties securing the money for payment on final dispensation by the Ontario Municipal Board.

10. The Institute supports an amendment to the legislation to allow for the Municipality to collect levies from future development when it occurs and to reimburse the developer that provided hard services oversized to permit the future development.

PART TWO: DETAILED POSITION OF THE URBAN DEVELOPMENT INSTITUTE POSITION
ON LOT LEVIES

1. The Institute recognizes that lot levies may be
legally imposed by a Region or local Municipality

The Institute, as noted, acknowledges that the present legislation in the Province of Ontario permits the imposition of lot levies by both the Regional Municipalities and the local Municipalities. The manner in which these levies are calculated and applied, however, has been the subject of extensive hearings before the Ontario Municipal Board and further litigation in the courts. The law is now clear that levies are only payable if they can be shown to relate to the hard services required as a direct result of a specific development. The Urban Development Institute accepts this approach and to a large degree support its continuance. Hard services are defined in No. 2 below.

2. The quantum of lot levies should be calculated
based upon the costs of providing hard services
only for a specific development.

The Institute believes that only hard services should be levyable. The cost of hard services are, relatively, easy to calculate as they pertain to a specific development. In addition, hard services

are recognized by the Institute as being necessary prior to any development proceeding.

The services that we believe should be the responsibility of new development are as follows:

- a) Water works, where not undertaken as part of Provincial or Federal scheme and including treatment facilities, storage facilities, trunk distribution facilities and trunk watermains.
- b) Sanitary sewage; works where not undertaken as part of a Provincial scheme and including treatment facilities and trunk sewers.
- c) Storm and surface drainage works; including improvements to existing water courses, enclosures and storm trunk sewers servicing a newly developing area.
- d) External road works; where they require improvements as a direct result of new development.

In contrast, soft services are to a large degree representative of the aspirations of a particular community. The Institute believes that it is inappropriate for new residents to bear the cost of soft services over which they had no say and may not want or need. It is unfair that the cost of these services should be financed by the homeowner over the life of his/her mortgage. Soft services should be regarded as a general cost with funds obtained through property taxes.

Therefore, the Institute is opposed to the inclusion of any soft service costs in the calculation of levies.

An alternative method of providing for soft services may be by way of local improvement wherein the residents of a particular subdivisional community can have a voice in the level and nature of service to be provided. The Institute also supports leaving to the business sector the operation of many soft services now provided by Municipalities. Examples of soft services that could possibly be carried on by private enterprise are nursing homes and arenas.

With respect to soft services, the industry does recognize, in part, a responsibility in allowing the ultimate needs, not desires of the community to be realized. In this regard, the industry supports giving careful consideration through urban design for the significant elements of the Municipality's park system and related uses.

3. The Municipality should be provided with a form or check list to allow for easy calculation of the prorated proportion of the capital cost attributable to each development.

The industry is often frustrated by its inability to obtain information on the way in which levies are presently calculated. Hand in hand with this frustration comes a scepticism with respect to the ambit of the levies and hence whether the levies as calculated are legal. If a standard form can be drawn and if this form can be made available to all parties then we believe that a better understanding of the concerns of

all parties can be realized. Such a form would also ease any problem of arbitration that the Ontario Municipal Board may have when levies are brought to its attention by way of appeal. The form should be simple and easy to understand and should allow for a full explanation of the capital costs involved and the basis for calculation of the prorated proportion.

4. The Institute believes that levies should be payable upon application for building permit.

In any legislation dealing with lot levies, care must be taken to establish when levies are payable. The Institute recommends that a simple and effective approach would be to standardize, across the Province, that lot levies are payable upon application for building permit.

The Industry finds it financially impractical to pay levies at any earlier stage. We would recommend, however, that if no permits are applied for within a period of, say, three years, then the levies should become payable to the extent that the works have been completed for the particular development.

5. The Institute is concerned with a hiatus period.

It has been the experience of the Institute in the past that when new legislation affecting land development has been proposed by the Province, the reaction of local governments is to delay the processing of development plans presently under consideration. This is especially true when it would appear as if some benefit may accrue to the Municipality.

We believe that if new legislation is proposed that the Province should take a firm stand and compel the Municipalities to continue processing development plans as expeditiously as possible.

6. The Institute believes that no levies should be charged for industrial or commercial development.

Clearly, to levy against industrial and commercial development is inappropriate. The tax burden carried by commercial and industrial properties is substantial compared to the services provided to it by the Municipality. In other words, benefits to the Municipality by having industrial and commercial development located within its boundaries are far greater than the costs to the Municipality. These benefits are not only financial but also social.

In one sense, it might be considered to be an unfair subsidization of industrial development if one municipality were not to impose industrial levies while another municipality chose to impose levies. The benefit in not paying levies could be used as an inticement for industry to locate in a particular municipality. This would, in our opinion, clearly be beyond the powers of a municipality and would be contrary to the policy of the Province.

7. The Municipality must be accountable for all funds collected through levies.

We believe that this is a fundamental requirement of any lot levy system. The new home buyer is being required to finance hard services and he/she should be able to satisfy himself that what he is paying for has in fact been properly put in place and that he has not paid for something that he did not receive. This is so obvious a need that it should not really have to be stated here but our past experience has shown a great reluctance by the municipalities to embrace this ideal.

Any excess funds should be rebated to the contributing party or parties.

8. Levies should be appealable to the Ontario Municipal Board.

Hopefully, appeals to the Ontario Municipal Board will prove to be unnecessary, however, past experience has shown that Municipalities have little regard for the law if it does not suit its purposes and we suspect that continued abuse of the process will occur. This abuse will occur regardless of the type of process used in the calculation of levies. Obviously, some relief must be available to protect the industry and the homebuyer from unsubstantiated demands by the Municipalities.

9. Plans should continue to be processed regardless of an appeal against the levies.

Once again, past experience has shown that time is the best friend of the Municipality and the worst enemy of the development

industry. Although it is generally recognized that the existing levy system is constantly abused by Municipalities, there have been few members of the development industry who have been able to afford the lengthy appeal process through the Ontario Municipal Board, the Provincial Cabinet and/or the Courts. This is in no way a criticism of the Board, Cabinet or the Courts but a simple fact of life. In the present situation an appeal of the levies effectively stops the processing of the development proposal. This situation has always worked to the advantage of the Municipality and has been effectively exploited by the Municipality.

We believe that development proposals should continue to be processed through the building permit stage regardless of the fact that the developer may have appealed the levy matter. If there is concern with respect to the final payment of levies, an agreement providing securities to the municipality can be entered into between the parties. To support this position a specific method of appealing levies should be created which would allow a development to proceed, in the meantime, unimpeded.

10. The Municipality should be in a position to
reimburse developers for oversizing services

It has come to our attention that the Region or the local Municipality may not have the expressed authority to collect monies from developers and then pay that money over to a developer who had installed services to such a scale so as to provide for the ultimate development of lands other than his own (i.e. oversizing). Representations have already

been made by members of the industry to officials of the Province of Ontario in an attempt to have this matter rectified.

The Institute suggests that as a part of the Government's review of the legislation governing levies, that it give consideration to amending the Regional acts and any other legislation as may be necessary to allow the Municipalities and particularly the Regional Municipalities to carry out a "banking" function. This would provide for a fair and equitable way of allowing development to proceed, of ensuring satisfactory levels of service for future development and ensuring that those who receive the benefits pay their fair share, all without financial hardship to the municipality.

This concludes the position of the Urban Development Institute with respect to levies. For the most part, the comments above have been a clear statement of the Urban Development Institute position on lot levies. We have not tried to address all issues but only those of major significance. In some cases, we have reacted to existing problems and in others we anticipated future problems as a result of discussions with representatives of the Province and A.M.O.

We will now recap what we understand to be the current position of the Ministry of Intergovernmental Affairs with respect to lot levies after which we will pose a series of questions that we would ask to be considered prior to the Province publishing its discussion paper on Levy Legislation.

PART THREE: THE CURRENT PROVINCIAL POSITION ON LOT LEVIES

It is our understanding that lot levies are proposed to be calculated based upon the following premises.

Under the proposed policy, each Municipality electing to use the legislation will develop a standard service level for each category of hard and soft services provided by the Municipality. Standards will be based upon existing levels of service which are being provided to the residents of the Municipality. For example, if the transit system of a Municipality with a population of 120,000 persons operated 40 vehicles, the service level standard would be 1 vehicle for 3,000 persons.

Once the standards have been developed the capital costs associated with the standard is to be determined on the basis of the present replacement costs of the facility in question. For example, the current cost of a transit vehicle used by the Municipality might be \$100,000.00. Grants paid by the Province are to be deducted from this amount. In the case of transit vehicles, the Ontario Ministry of Transportation and Communications provides financing of 75% of approved capital expenditures. Thus, the Municipal portion of the cost of the transit vehicle in the example is \$25,000.00

The service standard of 1 vehicle per 3,000 residents coupled with the Municipal portion of the capital cost of \$25,000.00 implies a cost per capita of \$8.33 or a cost per household at (3.5 persons) of \$29.16.

The Municipal cost of each facility providing hard and soft services would be determined in a similar manner and totalled. The residential lot levy could then be set at 80% of this total.

The above premises were confirmed with staff of the Ministry of Intergovernmental Affairs by Mr. R. Hobart of Clayton Research Associates Ltd.

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QUESTIONS TO BE CONSIDERED PRIOR TO FINALIZATION OF THE DISCUSSION

PAPER ON LOT LEVIES

1. What is the basis of the 80 percent figure? Is it reasonable to apply the same proportion to all municipalities, both old and very new? If 80 percent were to be shown as reasonable today, is there provision for reducing it over time. [as cities age and new construction activity falls (due to negative demographics) the proportion of capital expenditures in new areas will decline].

2. What is the method by which the municipalities will deem a capital cost appropriate for levies? Will it not have a tendency to "gold-plate" its capital items so that it obtains a monument for the future or ensures that the levy ultimately carries one hundred percent of the capital cost of the item?

3. Why is there no recognition given to the fiscal capacity of municipalities? A municipality will still have a large incentive to take on high valued assessment (expensive housing, industrial, etc.). Surely lot levies in a particular municipality should be related to the net financial impact of overall growth.

4. Why are municipalities so unique that normal financial practices regarding acquisition of capital facilities having many years of

life do not apply? Businesses including private and public utilities such as Bell Canada recognize the long-term nature of capital assets and borrow to finance a good part of them. Why should municipalities get virtually all money up front?

5. Regarding service standards, what if a municipality has excess capacity in services at present (or vice versa)? Will this be reflected in determining standards for new areas?

6. What will be the method by which the Province ensures that the correct overlap exists between the Regional and Municipal lot levy base, when for example, in Metro currently there is no significant Regional levy?

8. What will be done in cases of infill where no additional burden is being provided on the Municipality's level of service?

9. If there is to be an underlying basis of fairness to this provincial-wide legislation, clearly where commercial and industrial assessments have proven they fund in excess of the cost of servicing, no levies should be payable. Without such assurance of equity do we not have to call in to question the whole basis for the legislation?

10. Shouldn't this legislation be rationalized within the Planning Act where levies are currently discussed and being provided for? That part of the Provincial Government which implements the Planning Act understands our industry and, therefore, should understand how an effective system of implementing this legislation could be achieved.

11. How can the Province initiate legislation at the request of municipalities when it is quite clear that the only municipalities requiring this legislation are a small number on the edge of larger Metropolitan areas? Wouldn't it be more appropriate to balance the financial situation of Municipalities by changing the political boundaries so that the commercial/industrial assessment in the core of the Metropolitan area is available to offset the residential costs which may be burdensome on the periphery? Price Waterhouse in its major studies for the U.D.I. concluded that lot levies are, in fact, not a problem of municipal finance as much as an indication of inappropriate boundaries within Metropolitan areas.

12. What obligations are there upon a municipality to bring into the calculation of the proposed levy monies already on hand received as a condition of development and unexpended? What controls does the Province propose to impose to ensure that such funds are not spent recklessly in the interim. Here we have reference to the situation that occurred in many municipalities just prior to regional government where monies were spent rather than having to account for them.

13. What is the relationship, if any, between the provision and development of parks and the recreational portion of the capital cost of the levy? What credit, if any, is to be given for a payment in lieu of the 5% dedication? If a credit is to be given for that payment, what about the developer who actually dedicates and develops at his expense the parkland for the municipality.

14. What credit is to be given for any of the other contributions that may be required as a condition of development or redevelopment or which have been paid over the years. Some examples are:

- (i) park contributions under Section 35(b) of The Planning Act;
- (ii) sewage and water imposts under the Municipal Act;
- (iii) payments made over the years or that may be still outstanding for local improvements which in fact have brought some or all of the services to a particular site.

15. If levies are to be on a municipal wide basis, serious discrepancies could arise where the Municipality has both an urban and rural character. An obvious problem is a region wide levy because in a region the levels of service can vary greatly. The same circumstance applies in many of the newly developing municipalities.

16. Once a levy rate is approved, is a municipality bound to spend the money? If it does not, is there a refund and who receives it? Is the Ontario Municipal Board going to be put in the position of formally approving five year capital budgets? What happens if a municipality seeks to divert the funds received from the project upon which it is successful in obtaining Ontario Municipal Board approval to another which was not part of its projected levy base?

17. How will average service standards be derived for soft services? If the per capita approach is used will the standards recognize the impact of declining household sizes in older areas (i.e. if one arena is required per 20,000 persons and the population of the older area drops from 20,000 to 10,000 then an additional 10,000 new people can be served by the old arena.

